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इस भाग में भिन्न पृष्ठ संख्या दी जाती हैं जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

NOTIFICATION

New Delhi, the 16th February 1967

S.O. 601.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Arbitrator in the Industrial dispute between the employers in relation to Madras Dock Labour Board and their workmen represented by the Madras Harbour Workers' Union, Madras and Madras Port and Dock Workers' Congress, Madras which was received by the Government on 24th January, 1967.

AWARD

In the matter of arbitration in the Industrial Dispute between the Administrative Body of the Madras Dock Labour Board on the one hand and the Madras Harbour Workers' Union and the Madras Port and Dock Workers' Congress on the other hand under Section 10A of the Industrial Disputes Act, 1947 regarding payment of wages for weekly off to the Reserve Pool Workers.

PRESENT:

Shri O. Venkatachalam—Chief Labour Commissioner (Central), New Delhi.

Representing Employers:

1. Shri A. B. Ananthakrishnan, President: Administrative Body, Madras Dock Labour Board, assisted by Shri Shanmugasundaram, Administrative Officer, Madras Dock Labour Board.

Representing Workmen:

1. Shri A. S. K. Ayyengar, General Secretary, Madras Harbour Workers' Union.
2. Shri S. N. Narayanan, General Secretary, Madras Port & Dock Workers' Congress.

By a settlement dated 21st June, 1966 arrived at in the course of Conciliation proceedings held by the Regional Labour Commissioner (Central), Madras under the Industrial Disputes Act, 1947, the Administrative Body of the Madras Dock Labour Board entered into an agreement separately but in identical language with the Madras Harbour Workers' Union and the Madras Port and Dock Workers' Congress, for my arbitration as Deputy Chief Labour Commissioner (Central), under Section 10A of the said Act, on the following matters in dispute between the parties:—

- (1) Whether the Reserve Pool Workers of the Dock Labour Board who are given staggered off at present without wages, after six days' work in a week including days of attendance and on minimum guaranteed wage... should be given wages for the weekly off?
- (2) What shall be the quantum of wages for the weekly off? and
- (3) From what date?

2. It was also agreed by the parties that the Arbitrator should make his award within a period of three months or within such further time as is extended by mutual agreement between them in writing. In spite of my subsequent promotion as Chief Labour Commissioner (Central), thereby ceasing to be Deputy Chief Labour Commissioner (Central), the parties agreed on 10th October, 1966 that I should proceed to deal with the dispute by way of arbitration. They also agreed to extend the time limit for making my Award till 20th November, 1966 which was again subsequently extended to 31st January, 1967.

3. The genesis of this dispute was that on 8th March, 1966 the Madras Harbour Workers' Union submitted a charter of demands addressed to the various authorities including the Madras Dock Labour Board and its Administrative Body, threatening that if no satisfactory solution was arrived at on its demands within 15 days, it would call upon the workers to resort to a total strike in the Port. The charter of demands included, among others, the question of payment of wages to the reserve pool workers for the weekly off. Thereupon, the RLC (C), Madras held a series of discussions with the parties, and in particular the question of payment of wages of weekly off came up for discussion at the meeting of the Dock Labour Board on 18th June, 1966 and it was rejected by the Board. Immediately, the Madras Harbour Workers' Union called a strike by the reserve pool workers in the Port on the same day and the Madras Port and Dock Workers' Congress also joined the strike in support of the demand for wages for weekly off. As a result of the discussions held by the Regional Labour Commissioner (Central), Madras with the representatives of the Administrative Body and of the two Unions, a settlement was reached on 21st June, 1966 agreeing to refer the dispute for my arbitration under Section 10A of the Industrial Disputes Act, as already explained above. Following the settlement, the strike was called off on the same day.

4. The Administrative Body and the two Unions submitted their respective statements of the case as well as their rejoinders on the statements submitted by the opposite party. The dispute was later taken up by me for hearing at Madras on 10th October, 1966; at New Delhi on 1st November 1966 and 29th November, 1966 and at Hyderabad on 16th January, 1967. It was common ground between the parties that the reserve pool workers of the Dock Labour Board numbering about 1800 were being given weekly off in rotation but without wages. After tracing the development of the present wage structure obtaining in the Dock Labour Board, it has been argued on behalf of the Administrative Body that as the daily wage for these workers was arrived at by dividing the monthly wage by 26, the daily wage includes in itself the element of wages for the weekly off and hence the question of payment of wages separately for the weekly off did not arise. While refuting this argument, the Union leaders relied heavily on the judgment of the Supreme Court dated 10th October, 1961 in the dispute between the workmen of Bombay Port Trust and the Trustees of the Port of Bombay in Civil Appeal No. 529 of 1959. The relevant part of the judgment reads as under:—

"This brings us to the employer's claim that there has been constructive payment for the Sundays during this period, viz., October, 1953 to March 2, 1956. The argument is that the daily wage for these workmen was fixed by dividing all the components of the monthly scale of pay and allowances by 26 so that what a workman receives as daily wages is really $1/26$ th of the wage for 30 days. Thus it is said, the total receipts for the 26 days if no separate payment is made for the rest days, will be $26 \times 1/26$ th of 30 days' wage that is, 30 days wage. The fallacy in this argument is that it ignores the

essential fact that once the daily wage is fixed at a certain figure, it no longer retains its character of being $1/26$ th of the monthly wage. However arrived at, the daily wage is a daily wage and it is wrong to regard it as a certain fraction of the monthly wage. When the Central Government in making these Minimum Wages Rules made this provision for payment on a holiday it clearly intended that something in addition to what was being actually received for the six days of the week should be paid. This cannot be defeated by a statement that though in form six days wages were being paid, in fact and in substance, seven days wages were being paid. By no stretch of imagination can payment for six days be equated to payment for seven days."

5. The Union leaders also referred to the report of the Vasisht Committee (1955) which recommended that the position regarding payment of wages for weekly off should be reviewed by each Dock Labour Board, and also to the report of the Special Officer appointed by the Government of India in 1956 (Shri P. C. Chaudhri) who recommended the grant of weekly off with full wages to the port employees. They also relied heavily on the decision of the Bombay Dock Labour Board (in October, 1964) to pay their reserve pool workers wages for weekly off. This was followed by similar decisions of Dock Labour Boards of Calcutta, Visakhapatnam and Goa Ports. Reference was made on behalf of the workmen to paras 21 and 22 of the Second Pay Commission's Report according to which the Government was required to grant their employees wages for weekly off just as they have been advocating similar treatment to the employees covered by the Minimum Wages Act. With regard to the Union's stand under the Supreme Court's decision dated 10th October, 1961, the representatives of the Administrative Body pointed out that since the judgment was given in the context of Rule 23 of the Minimum Wages (Central) Rules as it existed before August, 1960, the principle laid down by the Supreme Court no longer holds good after the said Rule was amended in August, 1960 providing that where minimum daily rate of wages has been arrived at by dividing the minimum monthly rate of wages by 26, the daily wage includes in itself the element of wages for the weekly off force in this argument, I must point out that the reserve pool workmen of the Madras Dock Labour Board in respect of whom the present dispute relates, are not governed by the Minimum Wages Act or the Rules made thereunder. Consequently the principles laid down by the Supreme Court in its judgment of 10th October 1961 with reference to the legal position under Rule 23 before its amendment in 1960 would hold good for the establishments not covered by the Minimum Wages Act and Rules. I must, therefore, answer the first term of reference in the affirmative by holding that the reserve pool workers of the Madras Dock Labour Board should be paid wages for the weekly off which they were being granted by rotation.

6. The next question for consideration is, what should be quantum of wages for weekly off. The reserve pool workers in question consist mainly of mazdoors, winchmen and tindals and it was admitted by all the parties that while working out the time rates of wages as well as fall back wages under the piece-rate scheme which has been in vogue for several years, the Dock Labour Board had provided for an occupational difference of 50 paise per day for a winchmen and 100 paise per day for a tindal over and above the daily wage of a Mazdoor. The daily time-rate of a mazdoor is Rs. 4.12 while his daily guaranteed minimum (fall back wage) is Rs. 3.09. It was argued on behalf of the workmen that the reserve pool workers should be paid for the weekly off the daily time-rate of wages together with the additional D.A. and interim relief which in the case of a mazdoor comes to Rs. 6.18 per day (made up of Rs. 4.12 being the time rate, Rs. 1.61 being additional D.A. and Rs. 0.45 being interim relief) whereas the same for winchmen and tindals would come to Rs. 6.68 and Rs. 7.18 respectively per day. According to them this payment would be equitable to the workers as it would also correspond closely to the rate of wages applicable to the next preceding day within the meaning of Rule 23(4) of the M.W. (Central) Rules. The representatives of the Administrative Body on the other hand contended that if all reserve pool workers are to be paid wages for weekly off, the quantum of such wage should be the fall back wage (Rs. 3.09) for mazdoor together with Rs. 1.61 by way of additional D.A. and Rs. 0.45 by way of interim relief. In support of this contention they invited my attention to the relevant direction of the Supreme Court in their judgment of 10th October, 1961 referred to above. The relevant observation of the Court in that judgement reads as under:—

"The weekly wages or monthly wages of a person would not as ordinarily understood include the extra earnings of the workmen by working overtime. So also, in our opinion, the term daily wages as ordinarily

understood does not include overtime earnings. If it does not include overtime earnings, can it reasonably be said that it includes the high additional earnings that a worker may receive by increasing his output above the minimum fixed? We do not think that to be a reasonable interpretation of the words "daily wages". At the same time, we see no reason why the guaranteed minimum fixed for each workmen per day should not be considered his daily wages. The piece rate system introduced for these workmen has fixed such a minimum. Indeed, the fixation of such a minimum wage for a piece rate system makes, it may be said, the piece rate a time rate-cum-piece rate in which the guaranteed minimum is the time rate daily wage and the extra earnings are piece-rates".

in view of what Supreme Court has said on this point, I must agree with the contention of the Administrative Body and hold that the reserve pool workers shall be paid for weekly off, the fall-back wage (guaranteed minimum) together with the additional D.A. and the interim relief. It has come to be well recognised that wages for weekly off will be payable only if a workmen has worked continuously during the preceding six days of the week and I direct accordingly. For this purpose, his attendance at the call stands of the Administrative Body entitling him to attendance money as well as days of authorised leave or holidays for which he is paid wages will also count as days of work.

6. The last point which I have to consider is from what date my award should be operative. It was suggested on behalf of the Unions that in terms of the recommendations of the Vasist Committee, the Dock Labour Board was required to consider the question of payment of wages for weekly off after a reasonable time i.e. after the desired improvement in the out-put of labour has been achieved and sustained and as the Piece-rate Scheme was introduced from 1st March, 1958 and has yielded satisfactory results by way of significant output, the wages for weekly off to the reserve pool workers should be paid with retrospective effect at least from 1st March, 1958. In support of this demand, they also referred to their agitation over this issue for several years. On the other hand, the representatives of the Administrative Body argued that it was not at all possible for the individual Stevedores to recover any arrears on this account from their principals and for this reason, no retrospective effect should be given to my award. However, at the hearing on 16th January, 1967, the President of the Administrative Body was agreeable to the Award being given retrospective effect from 21st June, 1966 when the parties arrived at the settlement referring the dispute for my arbitration. While agreeing with the Administrative Body that any substantial retrospective effect of an award of this kind would impose a heavy burden on the Stevedores who could not hope to recover such arrears from their principals, it seems to me fair and reasonable that the award should be given retrospective effect from 1st April, 1966 which is the commencement of the current financial year and more so because the Madras Harbour Workers' Union had seriously taken up this issue for settlement only on 8th March 1966. I accordingly direct that the award shall come into force retrospectively, from 1st April, 1966.

7. The only question that now remains for consideration is the payment of arrears under this award. According to the representatives of the Administrative Body, the arrears come to about Rs. 40,000/- per month and on this basis the total arrears till the end of January, 1967 work out to over Rs. 4,00,000/-. Allowing for the time that the employers would require for preparation of arrear bills and in order to facilitate payment of the arrears without undue strain for them, I direct that the arrears shall be paid in two equal instalments within 60 days from the date the award becomes operative under the Industrial Disputes Act, 1947.

New Delhi,
January 21, 1967.

(Sd.) O. VENKATACHALAM,
Chief Labour Commissioner,
(Central) Arbitrator.

[No. 28(106)/66-LRIV.]

A. L. HANDA, Under Secy.